



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92610; File No. SR-NYSEArca-2021-31]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to List and Trade Shares of the Valkyrie Bitcoin Fund under NYSE Arca Rule 8.201-E**

August 9, 2021.

On April 23, 2021, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the Valkyrie Bitcoin Fund (“Trust”) under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the Federal Register on May 12, 2021.<sup>3</sup>

On June 22, 2021, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> This order institutes proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 91771 (May 6, 2021), 86 FR 26073 (May 12, 2021) (“Notice”). Comments on the proposed rule change can be found at: <https://www.sec.gov/comments/sr-nysearca-2021-31/srnysearca202131.htm>.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 92233 (June 22, 2021), 86 FR 34107 (June 28, 2021). The Commission designated August 10, 2021, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

I. Summary of the Proposal

As described in more detail in the Notice,<sup>7</sup> the Exchange proposes to list and trade the Shares of the Trust under NYSE Arca Rule 8.201-E, which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

The investment objective of the Trust will be for the Shares to reflect the performance of the value of a bitcoin as represented by the CF Bitcoin US Settlement Price (“Index”), less the Trust’s liabilities and expenses.<sup>8</sup> The Fund will use the Index to calculate the Trust’s net asset value (“NAV”).<sup>9</sup> The Index serves as a once-a-day benchmark rate of the U.S. dollar price of bitcoin (USD/BTC), calculated as of 4:00 p.m., E.T. The Index aggregates the trade flow of several bitcoin exchanges, during an observation window between 3:00 p.m. and 4:00 p.m., E.T., into the U.S. dollar price of one bitcoin at 4:00 p.m., E.T. The current constituent bitcoin exchanges of the Index are Bitstamp, Coinbase, Gemini, itBit, and Kraken (“Constituent Bitcoin Exchanges”). In calculating the Index, the methodology creates a joint list of certain trade prices and sizes from the Constituent Bitcoin Exchanges between 3:00 p.m. and 4:00 p.m., E.T. The methodology then divides this list into 12 equally-sized time intervals of 5 minutes and it calculates the volume-weighted median trade price for each of those time intervals. The Index is the arithmetic mean of these 12 volume-weighted median trade prices.<sup>10</sup>

---

<sup>7</sup> See Notice, supra note 3.

<sup>8</sup> Valkyrie Digital Assets LLC is the sponsor of the Trust (“Sponsor”) and Delaware Trust Company is the trustee. Coinbase Custody Trust Company, LLC (“Custodian”) will act as custodian for the Trust’s bitcoins. U.S. Bancorp Fund Services, LLC (“Administrator”) will act as the transfer agent and administrator of the Trust. See Notice, supra note 3, 86 FR at 26073.

<sup>9</sup> The Index is not affiliated with the Sponsor and is administered by CF Benchmarks Ltd. (“Benchmark Administrator”). See Notice, supra note 3, 86 FR at 26076.

<sup>10</sup> See id.

The Shares of the Trust represent units of fractional undivided beneficial interest in, and ownership of, the Trust. The Trust will only hold bitcoin. The Custodian will establish accounts that hold the bitcoins deposited with the Custodian on behalf of the Trust.<sup>11</sup>

The Administrator will calculate the NAV of the Trust once each Exchange trading day. The Sponsor will publish the NAV and NAV per Share as soon as practicable after their determination and availability, and the NAV will be released after the end of the Core Trading Session (4:00 p.m., E.T.). The NAV of the Trust is not officially struck until later in the day (often by 5:30 p.m., E.T., and usually by 8:00 p.m., E.T.). The Trust's NAV per Share is calculated by taking the current market value of its total assets, less any liabilities of the Trust, and dividing that total by the total number of outstanding Shares. The bitcoin held by the Trust will be valued based on the price set by the Index.<sup>12</sup>

The Trust will provide website disclosure of its bitcoin holdings daily.<sup>13</sup> The Trust will also disseminate an intraday indicative value ("IIV") per Share updated every 15 seconds by one of more major market data vendors during the Exchange's Core Trading Session (normally 9:30 a.m. to 4:00 p.m., E.T.). The IIV will be calculated by a third-party financial data provider using the prior day's closing NAV per Share of the Trust as a base and updating that value throughout the trading day to reflect changes in the most recently reported price level of the CME CF Bitcoin Real-Time Index ("BRTI"), as reported by CME Group, Inc., Bloomberg, L.P., or another reporting service.<sup>14</sup>

The Trust will issue and redeem Shares to authorized participants on an ongoing basis in one or more "Baskets" of 50,000 Shares. The creation and redemption of a Basket requires the

---

<sup>11</sup> See id. at 26073.

<sup>12</sup> See id. at 26076.

<sup>13</sup> See id. at 26081.

<sup>14</sup> The BRTI is calculated in real time based on the universe of the currently unmatched limit orders to buy or sell in the BTC/USD pair of all Constituent Bitcoin Exchanges. See id. at 26076.

delivery to the Trust, or the distribution by the Trust, of the number of whole and fractional bitcoins represented by each Basket being created or redeemed.<sup>15</sup> Creation orders and redemption orders may be placed either “in-kind” or “in-cash.” Although the Trust will create Baskets only upon the receipt of bitcoins, and will redeem Baskets only by distributing bitcoins, an authorized participant may deposit cash with the Administrator, which will facilitate the purchase or sale of bitcoins through a liquidity provider on behalf of an authorized participant (“Conversion Procedures”).<sup>16</sup>

II. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEArca-2021-31 and Grounds for Disapproval under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>17</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>18</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change’s consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed

---

<sup>15</sup> See id. at 26076-77.

<sup>16</sup> The Conversion Procedures will be facilitated by a single liquidity provider, which will be selected by the Sponsor on an order-by-order basis. In the event that an order cannot be filled in its entirety by a single liquidity provider, additional liquidity provider(s) will be selected by the Sponsor to fill the remaining amount. See id. at 26076-78.

<sup>17</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>18</sup> Id.

to prevent fraudulent and manipulative acts and practices” and “to protect investors and the public interest.”<sup>19</sup>

The Commission asks that commenters address the sufficiency of the Exchange’s statements in support of the proposal, which are set forth in the Notice,<sup>20</sup> in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. What are commenters’ views on whether the proposed Trust and Shares would be susceptible to manipulation? What are commenters’ views generally on whether the Exchange’s proposal is designed to prevent fraudulent and manipulative acts and practices? What are commenters’ views generally with respect to the liquidity and transparency of the bitcoin markets, the bitcoin markets’ susceptibility to manipulation, and thus the suitability of bitcoin as an underlying asset for an exchange-traded product?
2. What are commenters’ views of the Exchange’s assertion that the bitcoin ecosystem has matured considerably since the last time the Commission reviewed a proposal for a bitcoin exchange-traded product?<sup>21</sup> Are the changes that the Exchange identifies sufficient to support the determination that the proposed listing and trading of the Shares is consistent with the Act?
3. The Exchange states that the design choices within the methodology and framework of the Index are sufficiently resistant to market manipulation and that, to date, there has been no evidence that the Index has been subject to manipulation.<sup>22</sup> What are commenters’ views on these assertions regarding the Index, including the relevance of such assertions in determining whether the proposed listing and trading of the Shares is consistent with the Act?

---

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> See Notice, *supra* note 3.

<sup>21</sup> See *id.* at 26078.

<sup>22</sup> See *id.* at 26078-79.

4. The Exchange states that the Chicago Mercantile Exchange (“CME”) participates in the oversight committee of the Index.<sup>23</sup> The Exchange further states that the Constituent Bitcoin Exchanges “(1) must enter into a data sharing agreement with the CME, (2) must cooperate with inquiries and investigations of regulators and the Benchmark Administrator and (3) must submit each of its clients to its Know-Your-Customer (“KYC”) procedures; therefore, the CME would be able, in the case of any suspicious trades, to discover all material trade information including the identities of the customers placing the trades.”<sup>24</sup> What are commenters’ views on these assertions regarding the Index, including the relevance of such assertions in determining whether the proposed listing and trading of the Shares is consistent with the Act?

5. The Exchange states that the “proposed rule change is designed to prevent fraudulent and manipulative acts and practices because, although the global Bitcoin market is not inherently resistant to fraud and manipulation, the Index used by the Trust to determine the value of its bitcoin assets and its NAV, serves as a benchmark mechanism sufficient to mitigate the impact of instances of fraud and manipulation on a reference price for Bitcoin.”<sup>25</sup> The Exchange further states that “use of the Index would mitigate the effects of potential manipulation of the bitcoin market.”<sup>26</sup> What are commenters’ views regarding such assertions?

### III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not

---

<sup>23</sup> See id. at 26079.

<sup>24</sup> See id.

<sup>25</sup> See id. at 26080.

<sup>26</sup> See id.

appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>27</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2021-31 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2021-31. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

---

<sup>27</sup> Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2021-31 and should be submitted by **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Rebuttal comments should be submitted by **[INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-17305 Filed: 8/12/2021 8:45 am; Publication Date: 8/13/2021]